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United Nations

Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Fifteenth session
(12–23 September 2011)

Sixteenth session
(16–27 April 2012)

General Assembly
Official Records
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United Nations • New York, 2012

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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I. Organizational and other matters

A. States parties to the Convention

1. On 27 April 2012, the closing date of the sixteenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, there were 45 States parties to the International Convention on the Rights of All Migrant Workers and Members of Their Families. The Convention was adopted by the General Assembly in resolution 45/158 of 18 December 1990 and entered into force on 1 July 2003, in accordance with the provisions of its article 87, paragraph 1. A list of States that have signed, ratified or acceded to the Convention is contained in annex I to the present report.

B. Meetings and sessions

2. The Committee held its fifteenth session at the United Nations Office at Geneva from 12 to 23 September 2011. The Committee held 19 plenary meetings (CMW/C/SR.166–184). The provisional agenda, contained in document CMW/C/15/1, was adopted by the Committee at its 166th meeting, on 12 September 2011.

3. The Committee held its sixteenth session at the United Nations Office at Geneva from 16 to 27 April 2012. The Committee held 19 plenary meetings (CMW/C/SR.185–203). The provisional agenda, contained in document CMW/C/16/1, was adopted by the Committee at its 185th meeting, on 16 April 2012.

4. The list of documents issued or to be issued in connection with the fifteenth and sixteenth sessions of the Committee is contained in annex IV.

C. Membership and attendance

5. All members of the Committee, with the exception of Mr. Carrión Mena and Mr. Ibarra González, attended the fifteenth session of the Committee.

6. All members of the Committee attended the sixteenth session of the Committee.

7. A list of the members of the Committee, together with the duration of their terms of office, appears in annex II to the present report.

D. Solemn declaration

8. At the opening of the 185th meeting (sixteenth session), on 16 April 2012, newly elected members Francisco Carrión Mena, Ahmed Hassan El-Borai, Abdelhamid El Jamri, Khedidja Ladjel, Marco Núñez-Melgar Maguiña, Myriam Poussi and Azad Taghizade made the solemn declaration in accordance with rule 11 of the Committee's provisional rules of procedure.

E. Election of officers

9. Also at its 185th meeting, the Committee elected the following officers for a term of two years, in accordance with rule 12 of its provisional rules of procedure:

Chairperson: Abdelhamid El Jamri (Morocco)

Vice-chairpersons:	Francisco Carrión Mena (Ecuador) Myriam Poussi (Burkina Faso) Azad Taghizade (Azerbaijan)
Rapporteur:	Ahmadou Tall (Senegal)

F. Future meetings of the Committee

10. The seventeenth session of the Committee will be held from 10 to 14 September 2012 at the United Nations Office at Geneva.

11. At its fifteenth session, the Committee decided that henceforth it will be sufficient to receive documents in the requested languages four weeks before the meeting for which they are needed. It decided to request that the deadline for the submission of documents be adjusted accordingly.

G. Participation in the Inter-Committee Meeting and its working groups

12. The Chairperson, Mr. El Jamri, and Ana Elizabeth Cubias Medina represented the Committee at the twelfth Inter-Committee Meeting, which was held from 27 to 29 June 2011. The Chairperson participated in the 23rd meeting of chairpersons of the human rights treaty bodies, which took place on 30 June and 1 July 2011.

13. The 24th meeting of chairpersons will be held from 25 to 29 June 2012 in Addis Ababa, Ethiopia. The Chairperson, Mr. El Jamri, will represent the Committee and chair the meeting. At its 23rd meeting, the meeting of chairpersons decided to suspend the Inter-Committee Meeting.

H. Day of general discussion

14. On 19 September 2011 (176th and 177th meetings, fifteenth session), the Committee held a day of general discussion on the rights of migrant workers in an irregular situation and members of their families as the first phase in preparing a general comment on the subject. More than 50 representatives from governments, United Nations agencies, inter-governmental organizations, non-governmental organizations (NGOs) and academic institutions participated in the day of general discussion.

15. During the day of general discussion, participants discussed presentations by migration specialists on the Convention rights of irregular migrants, other complementary international standards, and the challenges faced in the protection of those rights. Presenters included a Committee member as well as representatives from international organizations, NGOs, academia, and from two permanent missions to the United Nations Office at Geneva (those of Argentina and Costa Rica). Participants then split into working groups dealing with the criminalization and detention of irregular migrants, the protection of and restrictions on their economic and social rights, and international cooperation in protecting their rights. The report on the day of general discussion is contained in annex V to this report. The written contributions for the day of general discussion can be found on the webpage of the Committee: http://www2.ohchr.org/english/bodies/cmw/dgd19092011.htm.

16. Following the day of general discussion, the Committee decided to prepare a general comment, No. 2, on the rights of migrant workers in an irregular situation and members of their families. Mehmet Sevim and Ahmadou Tall were appointed as co-rapporteurs to prepare the draft general comment.

I. Promotion of the Convention

17. On 4 May 2011, the Chairperson, Mr. El Jamri, participated in a seminar for the preparation of the second High-Level Dialogue on International Migration and Development to be held during the 68th session of the General Assembly in 2013.

18. The Chairperson participated as a panellist in side events at the fourth Global Forum on Migration and Development, which was hosted by the Government of Switzerland and took place in Geneva on 1 and 2 December 2011, and during the Civil Society Days preceding the Global Forum.

19. On 18 December 2011, the Chairperson issued a joint statement with the Special Rapporteur on the human rights of migrants, François Crépeau, on the occasion of International Migrants Day.

20. On 5 March 2012, the Chairperson and the co-rapporteurs for draft general comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, Mr. Sevim and Mr. Tall, participated in an expert meeting in Brussels to discuss the outline and content of the draft general comment.

21. On 20 March 2012, Mr. Brillantes gave a presentation on the work of the Committee at the launching event for a publication containing the English and Khmer versions of the Convention, jointly organized by OHCHR and UN Women in Phnom Penh, Cambodia.

J. Adoption of the report

22. On 21 October 2011, the Chairperson presented the Committee's annual report concerning its thirteenth and fourteenth sessions to the Third Committee of the General Assembly.

23. On 27 April 2012, at its 203rd meeting (sixteenth session), the Committee adopted the present annual report to the General Assembly.

II. Methods of work

24. The Chairperson represented the Committee at the first technical consultation with States parties on strengthening the United Nations human rights treaty body system, held on 12 and 13 May 2011 in Sion, Switzerland, which was hosted by the International Institute for the Rights of the Child/University Kurt Bösch and co-organized by OHCHR. He also represented the Committee at the Dublin II meeting on strengthening the treaty body system held on 10 and 11 November 2011 in Dublin, Ireland, which convened the hosts of each of the consultations held since 2009, as well as the chairpersons of treaty bodies and other stakeholders.

25. At its 182nd meeting (fifteenth session), the Committee decided that, starting from 2014, it will examine States parties' reports according to a comprehensive reporting calendar, under which all States parties to the Convention would be considered within a five-year reporting cycle, in line with article 73, paragraph 1 (b), of the Convention. It also decided to adopt lists of issues prior to reporting (LOIPR) at its sixteenth session in relation to those States parties with overdue second periodic reports which have accepted the new optional list of issues prior to the reporting procedure of the Committee. The responses to the lists of issues prior to reporting would then be considered as the second periodic reports of those States parties.

26. At its 183rd meeting (fifteenth session), the Committee discussed the possibility of considering the implementation of the Convention in a State party in the absence of a report and requested the Secretariat to prepare a note for the Committee's sixteenth session describing the practice of other treaty bodies, including specific references to the legal basis of the so-called non-reporting procedures. At its 198th meeting (sixteenth session), the Committee continued its discussion on the review of States parties in the absence of a report and, on the basis of the requested note prepared by the Secretariat, decided to amend its provisional rules of procedure by inserting the following new rule:

Consideration of States parties in the absence of a report

Rule 31 bis

1. In cases of failure of a State party to comply with its reporting obligations under article 73, paragraph 1, of the Convention, the Committee may notify the State party through the Secretary-General that it intends, at a session specified in the notification, to examine in public session, even in the absence of a report, the implementation of the Convention by the State party, on the basis of reliable information available to the Committee.

2. The Committee may, through the Secretary-General and together with the notification mentioned in paragraph 1 of the present Rule, transmit to the State party concerned a list of issues as to the main matters to be examined. The written replies of the State party to the list of issues shall be considered as the report of the State party under article 73, paragraph 1, of the Convention.

3. The Committee shall invite the State party to send a delegation to attend the session and engage in a dialogue with the Committee. The Committee may proceed to examine the implementation of the Convention even in the absence of a delegation of the State party.

4. The concluding observations shall be communicated to the State party, in accordance with article 74, paragraph 1, of the Convention, and made public.

5. The Committee shall include information on the application of the present Rule in its annual report to the General Assembly.

III. Cooperation with bodies concerned

27. The Committee continued its cooperation with United Nations specialized agencies, intergovernmental organizations and non-governmental organizations. It welcomed their contributions in relation to the consideration of States parties' reports.

28. The Committee also continued its close cooperation with the International Labour Organization (ILO), which assists the Committee in a consultative capacity, in accordance with article 74, paragraph 5, of the Convention.

IV. Reports by States parties under article 73 of the Convention

29. The Committee notes with concern that, as at 1 April 2012, the initial reports due under article 73 of the Convention had not yet been received from as many as 21 States parties. Annex III to the present report contains a table with the dates by which the reports of States parties are or were due.

V. Consideration of reports submitted by States parties in accordance with article 74 of the Convention

A. Adoption of lists of issues and lists of issues prior to reporting

30. At its fifteenth session, the Committee adopted lists of issues on the following reports submitted by States parties:

State party	*Type of report*	*Symbol of report*	*Symbol of list of issues*
Paraguay	Initial	CMW/C/PRY/1	CMW/C/PRY/Q/1
Tajikistan	Initial	CMW/C/TJK/1	CMW/C/TJK/Q/1

31. At its sixteenth session, the Committee adopted lists of issues on the following reports submitted by States parties:

State party	*Type of report*	*Symbol of report*	*Symbol of list of issues*
Azerbaijan	Second periodic	CMW/C/AZE/2	CMW/C/AZE/Q/2
Bolivia	Second periodic	CMW/C/BOL/2	CMW/C/BOL/Q/2
Bosnia and Herzegovina	Second periodic	CMW/C/BIH/2	CMW/C/BIH/Q/2
Colombia	Second periodic	CMW/C/COL/2	CMW/C/COL/Q/2
Rwanda	Initial	CMW/C/RWA/1	CMW/C/RWA/Q/2

32. Also at its sixteenth session, the Committee adopted lists of issues prior to reporting (LOIPR) in relation to those States parties that had accepted its new optional LOIPR procedure[1] (see above, at para. 25):

State party	*Periodic report due*	*Date of acceptance of LOIPR procedure*	*Symbol of LOIPR*
El Salvador	Second periodic	7 September 2011	CMW/C/SLV/Q/2
Mali	Second periodic	13 April 2012	CMW/C/MLI/Q/2
Philippines	Second periodic	23 September 2011	CMW/C/PHL/Q/1

[1] Egypt did not accept an invitation by the Committee to avail itself of its optional lists of issues prior to the reporting procedure. Egypt will therefore be expected to submit its second periodic report, due since 2009 (see annex III), as soon as possible in accordance with the general reporting guidelines of the Committee (CMW/C/2008/1).

B. Adoption of concluding observations

33. At its fifteenth session, the Committee considered and adopted concluding observations on the reports submitted by three States parties in accordance with article 74 of the Convention: the initial reports of Argentina (CMW/C/ARG/CO/1), Chile (CMW/C/CHL/CO/1) and Guatemala (CMW/C/GTM/CO/1).

34. At its sixteenth session, the Committee considered and adopted concluding observations on the reports submitted by two States parties in accordance with article 74 of the Convention: the initial reports of Paraguay (CMW/C/PRY/CO/1) and Tajikistan (CMW/C/TJK/CO/1).

35. The concluding observations adopted by the Committee at its fifteenth and sixteenth sessions are available from the Official Document System of the United Nations (http://documents.un.org) under the symbols indicated below:

- **Argentina** (CMW/C/ARG/CO/1)
- **Chile** (CMW/C/CHL/CO/1)
- **Guatemala** (CMW/C/GTM/CO/1)
- **Paraguay** (CMW/C/PRY/CO/1)
- **Tajikistan** (CMW/C/TJK/CO/1)

Annexes

Annex I

States that have signed, ratified or acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as at 1 April 2012

State	*Signature, succession to signature*[d]	*Ratification accession*[a] *succession*[d]
Albania		5 June 2007[a]
Algeria		21 April 2005[a]
Argentina	10 August 2004	23 February 2007
Azerbaijan		11 January 1999[a]
Bangladesh	7 October 1998	24 August 2011
Belize		14 November 2001[a]
Benin	15 September 2005	
Bolivia		16 October 2000[a]
Bosnia and Herzegovina		13 December 1996[a]
Burkina Faso	16 November 2001	26 November 2003
Cambodia	27 September 2004	
Cameroon	15 December 2009	
Cape Verde		16 September 1997[a]
Chile	24 September 1993	21 March 2005
Colombia		24 May 1995[a]
Comoros	22 September 2000	
Congo	29 September 2008	
Ecuador		5 February 2002[a]
Egypt		19 February 1993[a]
El Salvador	13 September 2002	14 March 2003
Gabon	15 December 2004	
Ghana	7 September 2000	7 September 2000
Guatemala	7 September 2000	14 March 2003*

State	*Signature, succession to signature[d]*	*Ratification accession[a] succession[d]*
Guinea		7 September 2000[a]
Guinea-Bissau	12 September 2000	
Guyana	15 September 2005	7 July 2010
Honduras		9 August 2005[a]
Indonesia	22 September 2004	
Jamaica	25 September 2008	25 September 2008
Kyrgyzstan		29 September 2003[a]
Lesotho	24 September 2004	16 September 2005
Liberia	22 September 2004	
Libyan Arab Jamahiriya**		18 June 2004[a]
Mali		5 June 2003[a]
Mauritania		22 January 2007[a]
Mexico	22 May 1991	8 March 1999***
Montenegro	23 October 2006[d]	
Morocco	15 August 1991	21 June 1993
Mozambique	15 March 2012	
Nicaragua		26 October 2005[a]
Niger		18 March 2009[a]
Nigeria		27 July 2009[a]
Palau	20 September 2011	
Paraguay	13 September 2000	23 September 2008
Peru	22 September 2004	14 September 2005
Philippines	15 November 1993	5 July 1995
Rwanda		15 December 2008[a]
Sao Tome and Principe	6 September 2000	
Senegal		9 June 1999[a]
Serbia	11 November 2004	
Seychelles		15 December 1994[a]
Sierra Leone	15 September 2000	
Sri Lanka		11 March 1996[a]
Saint Vincent and the Grenadines		29 October 2010[a]

State	*Signature, succession to signature*[d]	*Ratification accession*[a] *succession*[d]
Syrian Arab Republic		2 June 2005[a]
Tajikistan	7 September 2000	8 January 2002
Timor-Leste		30 January 2004[a]
Togo	15 November 2001	
Turkey	13 January 1999	27 September 2004
Uganda		14 November 1995[a]
Uruguay		15 February 2001[a],****
Venezuela	4 October 2011	

* On 18 September 2007, Guatemala made a declaration recognizing the Committee's competence under articles 76 and 77 of the Convention to receive and consider inter-State communications and individual communications, respectively.

** The name of the State party was changed in September 2011 to Libya.

*** On 15 September 2008, Mexico made a declaration recognizing the Committee's competence under article 77 of the Convention to receive individual communications.

**** On 13 April 2012, Uruguay made a declaration recognizing the Committee's competence under article 77 of the Convention to receive individual communications.

Annex II

Membership of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families at 1 January 2012

Name of member	*Country of nationality*	*Term expires on 31 December*
José Serrano **Brillantes**	Philippines	2013
Francisco **Carrión Mena**	Ecuador	2015
Fatoumata Abdourhamana **Dicko**	Mali	2013
Ahmed Hassan **El-Borai**	Egypt	2015
Abdelhamid **El Jamri**	Morocco	2015
Miguel Ángel **Ibarra González**	Guatemala	2013
Prasad **Kariyawasam**	Sri Lanka	2013
Khedidja **Ladjel**	Algeria	2015
Andrea **Miller-Stennett**	Jamaica	2013
Marco **Núñez-Melgar Maguiña**	Peru	2015
Myriam **Poussi**	Burkina Faso	2015
Mehmet **Sevim**	Turkey	2013
Azad **Taghizade**	Azerbaijan	2015
Ahmadou **Tall**	Senegal	2013

Composition of the Bureau

Chairperson:	Abdelhamid **El Jamri** (Morocco)
Vice-Chairpersons:	Francisco **Carrión Mena** (Ecuador) Myriam **Poussi** (Burkina Faso) Azad **Taghizade** (Azerbaijan)
Rapporteur:	Ahmadou **Tall** (Senegal)

Annex III

Submission of reports by States parties under article 73 of the Convention as at 1 April 2012

State party	*Type of report*	*Date due*	*Received*	*Session/year examined*
Albania	Initial	1 October 2008	6 October 2009	13th session (2010)
	Second periodic	1 November 2015		
Algeria	Initial	1 August 2006	3 June 2008	12th session (2010)
	Second periodic	1 May 2012		
Argentina	Initial	1 June 2008	2 February 2010	15th session (2011)
	Second periodic	1 October 2016		
Azerbaijan	Initial	1 July 2004	22 June 2007	10th session (2009)
	Second periodic	1 May 2011	26 October 2011	
Bangladesh	Initial	23 September 2012		
Belize	Initial	1 July 2004		
Bolivia	Initial	1 July 2004	22 January 2007	8th session (2008)
	Second periodic	1 July 2009	18 October 2011	
Bosnia and Herzegovina	Initial	1 July 2004	2 August 2007	10th session (2009)
	Second periodic	1 May 2011	12 August 2011	
Burkina Faso	Initial	1 March 2005		
Cape Verde	Initial	1 July 2004		
Chile	Initial	1 July 2006	9 February 2010	
	Second periodic	1 October 2016		
Colombia	Initial	1 July 2004	25 January 2008	10th session (2010)
	Second periodic	1 May 2011	18 October 2011	
Ecuador	Initial	1 July 2004	27 October 2006	7th session (2007)
	Second periodic	1 July 2009	23 November 2009	13th session (2010)
	Third periodic	1 November 2015		
Egypt	Initial	1 July 2004	6 April 2006	6th session (2007)
	Second periodic	1 July 2009		
El Salvador**	Initial	1 July 2004	19 February 2007	9th session (2008)
	Second periodic	1 December 2010		

State party	*Type of report*	*Date due*	*Received*	*Session/year examined*
Ghana	Initial	1 July 2004		
Guatemala	Initial	1 July 2004	8 March 2010	15th session (2011)
	Second periodic	1 October 2016		
Guinea	Initial	1 July 2004		
Honduras	Initial	1 December 2006		
Jamaica	Initial	1 January 2010		
Kyrgyzstan	Initial	1 January 2005		
Lesotho	Initial	1 January 2007		
Libyan Arab Jamahiriya*	Initial	1 October 2005		
Mali**	Initial	1 October 2004	29 July 2005	4th session (2006)
	Second periodic	1 October 2009		
Mauritania	Initial	1 May 2008		
Mexico	Initial	1 July 2004	14 November 2005	5th session (2006)
	Second periodic	1 July 2009	9 December 2009	14th session (2011)
	Third periodic	1 April 2016		
Morocco	Initial	1 July 2004		
Nicaragua	Initial	1 February 2007		
Niger	Initial	1 July 2010		
Nigeria	Initial	1 November 2010		
Paraguay	Initial	1 January 2010	10 January 2011	16th session (2012)
	Second periodic	1 May 2017		
Peru	Initial	1 January 2007		
Philippines**	Initial	1 July 2004	7 March 2008	10th session (2009)
	Second periodic	1 May 2011		
Rwanda	Initial	1 April 2010	21 October 2011	
Senegal	Initial	1 July 2004	1 December 2009	13th session (2010)
	Second periodic	1 November 2015		
Seychelles	Initial	1 July 2004		
Sri Lanka	Initial	1 July 2004	23 April 2008	11th session (2009)
	Second periodic	1 November 2011		

State party	*Type of report*	*Date due*	*Received*	*Session/year examined*
Syrian Arab Republic	Initial	1 October 2006	21 December 2006	8th session (2008)
	Second periodic	1 October 2011		
Tajikistan	Initial	1 July 2004	3 December 2010	16th session (2012)
	Second periodic	1 May 2017		
Timor-Leste	Initial	1 May 2005		
Turkey	Initial	1 January 2006		
Uganda	Initial	1 July 2004		
Uruguay	Initial	1 July 2004		

* The name of the State party was changed in September 2011 to Libya.

** States parties that have accepted the optional list of issues prior to reporting procedure under which their written replies to the Committee's list of issues prior to reporting (LOIPR) shall be considered as their subsequent periodic reports under article 73, paragraph 1 (b), of the Convention.

Annex IV

List of documents issued or to be issued in connection with the fifteenth and sixteenth sessions of the Committee

CMW/C/15/1	Provisional agenda and annotations (fifteenth session of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families)
CMW/C/SR.166–184	Summary records of the fifteenth session of the Committee
CMW/C/16/1	Provisional agenda and annotations (sixteenth session of the Committee)
CMW/C/SR.185–203	Summary records of the sixteenth session of the Committee
CMW/C/ARG/1	Initial report of Argentina
CMW/C/ARG/Q/1	List of issues: Argentina
CMW/C/ARG/Q/1/Add.1	Written replies by the Government of Argentina to the list of issues
CMW/C/ARG/CO/1	Concluding observations of the Committee on the initial report of Argentina
CMW/C/CHL/1	Initial report of Chile
CMW/C/CHL/Q/1	List of issues: Chile
CMW/C/CHL/Q/1/Add.1	Written replies by the Government of Chile to the list of issues
CMW/C/CHL/CO/1	Concluding observations of the Committee on the initial report of Chile
CMW/C/GTM/1	Initial report of Guatemala
CMW/C/GTM/Q/1	List of issues: Guatemala
CMW/C/GTM/Q/1/Add.1	Written replies by the Government of Guatemala to the list of issues
CMW/C/GTM/CO/1	Concluding observations of the Committee on the initial report of Guatemala
CMW/C/PRY/1	Initial report of Paraguay
CMW/C/PRY/Q/1	List of issues: Paraguay
CMW/C/PRY/Q/1/Add.1	Written replies from the Government of Paraguay to the list of issues
CMW/C/PRY/CO/1	Concluding observations of the Committee on the initial report of Paraguay
CMW/C/TJK/1	Initial report of Tajikistan

CMW/C/TJK/Q/1	List of issues: Tajikistan
CMW/C/TJK/Q/1/Add.1	Written replies from the Government of Tajikistan to the list of issues
CMW/C/TJK/CO/1	Concluding observations of the Committee on the initial report of Tajikistan

Annex V

Report on the day of general discussion on migrant workers in an irregular situation and members of their families

I. Opening of the day of general discussion

1. At its 176th and 177th meetings, on 19 September 2011, the Committee held a day of general discussion on the rights of migrant workers in an irregular situation and members of their families. In his opening remarks, the Chairperson of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Committee), Abdelhamid El Jamri, stated that the day aimed at clarifying the scope of the rights of migrant workers in an irregular situation and members of their families and was the first phase in preparing a general comment on the subject.

2. Opening remarks were delivered on behalf of the High Commissioner for Human Rights by Craig Mokhiber, Chief of the Economic and Social Issues Branch, Office of the High Commissioner for Human Rights (OHCHR), who recalled that, with very few and narrowly defined exceptions, international human rights law protected the rights of all migrants, regardless of their status. One of the thematic priorities for OHCHR was to ensure the realization of human rights in the context of migration, particularly as regards economic, social and cultural rights, migration detention, criminalization of irregular migration, and the fight against xenophobia or discrimination against migrants. He hoped that the day of general discussion would help to clarify misconceptions about the following questions:

- How can human rights and labour standards relevant to migrant workers in an irregular situation be addressed more effectively?
- How can States avoid criminalizing irregular migration?
- How can States ensure that migrant workers in an irregular situation and members of their families can effectively claim their rights?
- What alternative measures can be used to substitute for administrative detention of migrants in an irregular situation?
- To what extent are the economic and social rights of migrants in an irregular situation protected under international human rights law?

II. Expert statements

3. Complementary remarks were made by a representative from the International Labour Organization (ILO), who stressed the synergies between international labour standards and international human rights law in relation to migrant workers in an irregular situation and members of their families. ILO Conventions Nos. 97 (1949) concerning Migration for Employment and 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, together with their accompanying Recommendations, Nos. 86 and 151 respectively, applied to all workers irrespective of their nationality or immigration status, unless otherwise stated. This principle was also reflected in the preamble to the 1919 ILO Constitution and had been reaffirmed by the ILO Committee on Freedom of Association.

4. The complementarity between international labour standards and human rights had been stressed by the ILO Committee of Experts on the Application of Conventions and Recommendations, which viewed article 1 of ILO Convention No. 143, requiring States parties "to respect the basic human rights of all migrant workers", as referring to "the fundamental human rights contained in the international instruments adopted by the UN, which include some of the fundamental rights of workers". According to the ILO Multilateral Framework on Labour Migration, the human rights of all migrant workers, as reflected in the eight fundamental ILO Conventions, in relevant United Nations human rights treaties and in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, should be promoted and protected, regardless of their status.

5. In his presentation, Ahmadou Tall, a member of the Committee on Migrant Workers, underscored the balance that the Convention sought to achieve between national sovereignty and the need both to protect the rights of migrant workers in an irregular situation from exploitation, and to regulate migration flows in accordance with a human rights-based approach. The Universal Declaration and the international human rights Covenants conferred rights on all human beings, including migrants, regardless of their status. In addition to those rights and the prohibition of discrimination in article 7, the Convention granted specific rights to migrant workers and members of their families, including those in an irregular situation. He elaborated on some such rights, as contained in parts III and IV of the Convention.

6. Vincent Chetail, a professor at the Graduate Institute of International and Development Studies, Geneva, expanded on those rights in his comparative analysis of the Convention and other human rights treaties. While the majority of the provisions in the Convention that applied to migrant workers in an irregular situation concerned general human rights common to all human rights treaties, two provisions had been contextualized to take account of the specific status of migrants deprived of their liberty (art. 17) and to enable migrant workers to settle any claims for wages in case of expulsion (art. 22). Part III of the Convention protected a few important rights that were not explicitly covered in other international human rights treaties, such as the protection against unauthorized confiscation or destruction of documents, the right to transfer one's savings upon termination of the stay in the State of employment, and the right to be informed about the Convention rights. Other rights that were protected in other human rights treaties irrespective of nationality and immigration status were not contained in the Convention.

III. Panel discussion: The challenges when protecting the rights of migrant workers in an irregular situation and members of their families

7. The representative of Costa Rica to the United Nations Office at Geneva shared the concerns and challenges of a non-State party to the Convention in the area of migration. Costa Rica was a country of destination and transit. Its strong democratic institutions and legislation, the ranking of human rights above the Constitution, and the international treaties ratified by Costa Rica, including most ILO Conventions, provided sufficient safeguards for protecting the rights of all migrants. However, the question of migration could not be separated from the economic situation of a country. Similarly, it was difficult to imagine how the economic and social rights of migrants could be protected if those migrants were clandestinely within a State's territory. Ratification of the Convention was not on the political agenda of the current Government.

8. The representative of the Permanent Mission of Argentina to the United Nations Office at Geneva described the positive experience of Argentina in liberalizing its

migration policy. Until 2003, it had had a restrictive migration law and was evolving towards a two-tier society, with migrants having little or no access to work, education and health and serving as scapegoats for the increasingly difficult economic situation. The progressive Migration Law of 2003 focused on the human rights of migrants rather than national security, providing for a human right to migrate, equal treatment of migrants and nationals, the right to family reunification, and equal access for migrants to health, education and social assistance, irrespective of their migration status.

9. Under a regularization programme ("Patria Grande"), Argentina had regularized 225,000 migrants from Mercosur and associated countries between 2006 and 2010 (out of a total of 423,000 applicants). Thanks to these measures, unemployment and poverty had significantly decreased since 2004. The Argentine experience showed that it was possible to reconcile liberal migration policies with States' economic needs, provided that regularization is accompanied by legislative and policy changes addressing the underlying causes of irregular migration.

10. A senior migration specialist from Global Migration Policy Associates recalled that, despite the current economic crisis, there was no reduction in demand for cheap or highly skilled labour by migrants. Despite the long-term trend towards stronger demand, States increasingly applied a control-based approach in regulating labour market migration. There was a tendency to combine labour inspection and immigration control to detect irregular migrants. While undocumented migrants were often immediately expelled, employers were merely fined affordable penalties. Temporary or circular migration, by which greater access to destination country labour markets can be achieved by lowering the level of protection of migrant workers in temporary or circular arrangements, was also increasingly being proclaimed as a solution to irregular migration.

11. He identified three major challenges: economic pressures to resist the regularization of migrant labour mobility; the blame placed on migrants, in particular those in an irregular situation, for economic and social problems, which leads to their stigmatization (for example, as unfair competitors for jobs and opportunists with regard to social protection benefits); and the criminalization of irregular migrants. He proposed a number of solutions, including wider ratification of the Convention, the development of national labour migration policies with concrete implementation plans even in the absence of such ratification, social protection and the provision of essential services such as health and education for migrants in an irregular situation, and strict separation of immigration control from those services and from labour inspection.

12. The participants discussed the legal and socioeconomic implications of irregular migration. Concern was expressed about the trend towards criminalizing migrants in an irregular situation and persons assisting them such as other migrants, teachers, health professionals, or landlords. States should consider regularizing migrants, most of whom had entered a country legally and subsequently fallen into an irregular situation when overstaying their permits, trying to escape exploitation or abuse by their employers, or in the absence of legal channels for obtaining a permit. The consequences of denying migrants basic rights included higher social costs, lack of integration, xenophobia, and even crime. However, some States perceived the Convention as a threat to their efforts to deregulate the labour market and to cut social benefits.

IV. The protection of the rights of migrants in an irregular situation in practice

13. The Director of the Platform for International Cooperation on Undocumented Migrants (PICUM), gave a presentation on European practice. Since 1999, the European

Union States, with an estimated four million undocumented migrants, had had a common immigration policy. In many member States, labour legislation made it impossible for undocumented migrant workers to claim paid overtime, holidays or sick leave because of economic dependence, legal costs or the absence of identity documents. Migrant workers needed to be informed not only about their rights but also about how to exercise those rights.

14. In some European Union States, migrants had to pay for all health-care services, whereas the practice in other States was either consistent with article 28 of the Convention (free emergency medical care) or went beyond that standard, in line with the 2011 European Parliament Resolution on reducing health inequalities in the European Union. The basic right of access to education (art. 30 of the Convention) was generally ensured to all migrant children between 6 and 16 years of age, but was limited with regard to pre-school or post-secondary education. Migrant women victims of violence in an irregular situation had limited access to justice (art. 16 of the Convention), as they faced the risk of expulsion when reporting to the police. States should ratify the Convention and the related ILO Conventions, remove administrative barriers preventing migrants in an irregular situation from accessing basic services, refrain from criminalizing individuals or organizations assisting them, and consider regularizing irregular migrants.

15. In her statement, a representative of the International Trade Union Federation, stressed that the rights to freedom of association and to collective bargaining were essential for ensuring compliance with the labour rights of migrant workers. While ILO Conventions Nos. 97 and 143 covered those core labour standards, national laws were often not in conformity. Anti-union practices affecting migrants included administrative obstacles, unfair dismissals, and even expulsion of migrant workers in an irregular situation. There was a need to extend collective agreements to such migrants to ensure equal treatment, to prevent "social dumping", and to reinforce and extend to intermediaries the deterrents for employers such as strict fines and other sanctions. Similarly, an international standard based on ILO Convention No. 181 (1997) concerning Private Employment Agencies was needed to regulate the activities of cross-border agencies. Regularization was one of the best ways to put an end to illegal practices by agencies and to exploitation of migrant workers, as well as to guarantee their social protection and equal treatment with nationals. Regularization should be based on clear, transparent and uniform criteria to be defined in a broad national consultation process and take into account current and future labour market shortages.

16. During the discussion, it was highlighted that one of the benefits of regularization was that it requires migrant workers to pay taxes and to contribute to social security schemes. Several participants underlined the importance of ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers as an advocacy tool, including in States that had not ratified the Convention.

V. Working groups

(1) The criminalization of migrant workers in an irregular situation and their vulnerability to exploitation, abuse and arbitrary detention (moderator: Ms. Poussi, member of CMW; presenters: Guillermo Reyes, First Secretary, Permanent Mission of Mexico; William Gois, Migrant Forum in Asia; rapporteur: Mariette Grange)

17. The Working Group considered that, except in relation to the events of 11 September 2001, criminalization of undocumented migrants was a result of the global economic crisis and a response by governments to social unrest. While they accepted irregular migration during times of economic growth, governments refused to protect the

rights of undocumented migrants in difficult times. The Working Group stressed the need for more research on the consequences of such criminalization, as well as on its role in political discourse, for example during national elections.

18. The lack of a special regime for the deprivation of liberty based on immigration status resulted in a lack of safeguards, risk of ill-treatment, family separation, and denial of labour rights. To counter negative public perceptions of migrants, there was a need to better demonstrate the contribution of migrants to local economies and society. Given that the public often failed to differentiate between administrative detention and criminal processes, governments should raise public awareness and remind policymakers that undocumented migrants are not criminals; they should also avoid terminology labelling them as "illegal" or "irregular" migrants. In fact, immigration detention was a consequence of failed immigration policies. It also generated negative images of migrants which contributed to racism and xenophobia.

19. Complaints mechanisms could be made more accessible and effective for migrants through telephone hotlines, mandatory consular notification of a migrant's presence in the country of employment to facilitate immediate assistance, and regular visits by consular representatives to detention centres, prisons and police stations. Another strategy was for lawyers to bring forward court cases with a view to changing the law.

20. The Working Group identified the following good practices for governments: placing human rights at the centre of policymaking, inter alia by ratifying the Convention, and avoiding criminalization of undocumented migrants; using terminology that minimizes its perceived association with criminality; reflecting irregular migration in national development plans; regularizing undocumented migrants on the basis of clear and transparent criteria and within the framework of a long-term migration policy; adopting legislation protecting the rights of all migrant workers, irrespective of their immigration status; ensuring that the police protect all migrant workers reporting abuse; ensuring migrants' access to labour and administrative courts; clearly separating immigration control from labour inspections, basic services and judicial remedies for migrants in an irregular situation; and engaging in a dialogue with countries of origin, for example to ensure reciprocity of treatment.

21. Good practices for diplomatic missions and embassies included: assisting their own nationals to document their presence in destination countries; conducting visits to places where nationals are deprived of their liberty; and putting in place programmes for large-scale emergency repatriation of undocumented migrants in times of upheaval and political crisis in destination countries, with support from international organizations. Examples of good practices for civil society included mobilizing against the criminalization of service providers dealing with migrants in an irregular situation and enhancing the capacity of migrants to self-organize and support each other.

(2) Protection and restriction of economic and social rights of migrant workers in an irregular situation and members of their families (moderator: Mr. Kariyawasam (member of the Committee); presenters: Sergey Khrychikov (Council of Europe); Mr. Cholewinski (ILO); rapporteur: Paola Pace, International Organization for Migration)

22. The Working Group analyzed the major relevant Council of Europe treaties: the European Convention on Human Rights applied to everyone regardless of individual legal status. While it only protected civil and political rights, economic and social rights could be derived from some of those rights. A proposal to codify a list of minimum economic and social rights that would apply to migrants in an irregular situation had not yet attracted sufficient political support. Several judgments of the European Court of Human Rights established a link between human rights and basic social standards. The Court had also examined cases involving irregular migrants and had found violations of, inter alia, the

prohibition of slavery and forced labour (art. 4), the right to a fair trial (art. 6), the right to an effective remedy (art. 13) and the prohibition of discrimination (art. 14). The Court found it contrary to the prohibition of torture (art. 3) to return persons with life-threatening medical conditions or terminal illness to a country where treatment is not accessible. A breach of article 3 had also been found where an asylum seeker was living in inhumane conditions. In addition, the Court used soft law instruments such as Recommendation No. R (2000) 3 of the Committee of Ministers to member states on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship, albeit non-binding, to enforce economic and social rights.

23. Other instruments that could be used to protect and define the economic and social rights of migrants included Protocol No. 1 to the European Convention on Human Rights guaranteeing the right of all children, including those of undocumented migrants, to free education. While the European Social Charter in most cases did not apply to migrants in an irregular situation, article 13 of the Charter required member States to provide social and medical assistance to anyone without adequate resources, irrespective of legal status. However, the extent of social assistance under the Charter was left to the discretion of member States.

24. The Working Group emphasized the role that could be played by international monitoring mechanisms in upholding the economic and social rights of irregular migrants. The European Committee for the Prevention of Torture was mentioned as an example of an effective monitoring mechanism to improve the situation of detained migrants. The Working Group further agreed that migrants in an irregular situation faced significant barriers when attempting to access judicial remedies, either because they were not aware of their rights, were concerned about the consequences, such as detention, or lacked the time and financial resources to avail themselves of such remedies. Other legal and practical obstacles to migrants' access to economic and social rights included the duty in some countries to report irregular migrants to the immigration authorities and the limited recognition of those rights in domestic law. Although under many national constitutions economic and social rights were not limited to nationals, national legislation often failed to specify individual entitlements.

25. The Working Group noted that the minimum rights protected under the Convention (see art. 81) seemed narrower in scope than their counterparts in other core United Nations human rights treaties. For example, the two Covenants both referred to ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise, which applied to all migrant workers. In the Convention, the right to freedom of association and to organize collectively is restricted to migrant workers in a regular situation. However, the Committee's general comment No. 1 (2010) on migrant domestic workers seemed to extend it to migrant workers in an irregular situation. Similarly, the Committee on Economic, Social and Cultural Rights (in its general comment No. 14) and CERD (in its general recommendation No. XXX) extended the right to health to all persons, regardless of their status, and thus went beyond article 28 of the Convention, which only guaranteed the right to emergency medical treatment to all migrants.

26. There was agreement within the Working Group that article 27 (2) of the Convention should be interpreted broadly to ensure that migrant workers in an irregular situation are reimbursed any social security benefits for which they had made contributions. While the Convention did not protect the right to work, and article 79 provided that States parties retained the right to decide on the criteria for admitting migrant workers, the Committee on Economic, Social and Cultural Rights emphasized in its general comment No. 18 (2005) on the right to work that that right was bound by the application of the non-discrimination principle. The applicability of the right to work to irregular migrants should therefore be discussed in terms of equal treatment and non-discrimination. That right could

only be restricted in the pursuit of a legitimate objective and if the measures to achieve this objective were reasonable and proportionate. Although the protection of national labour markets could be seen as a legitimate objective, this argument was less tenable when a large number of migrant workers in an irregular situation responded to the labour market demands of a country.

27. The Working Group concluded that, on the basis of the non-discrimination principle, the protection of irregular migrants under the other core United Nations human rights treaties went beyond their economic and social rights under the Convention. It also stressed that immigration enforcement should be strictly separated from access to economic and social rights by migrant workers in an irregular situation.

(3) International cooperation in the protection of the rights of migrant workers in an irregular situation and members of their families (moderator: Mr. Sevim, member of the Committee); presenters: Denis Y. Lepatan, Deputy Permanent Representative of the Philippines to the United Nations Office at Geneva; rapporteur: John Bingham, International Catholic Migration Commission)

28. The Working Group discussed the reasons for the reluctance of destination countries to ratify the Convention, the usefulness of the Global Forum on Migration and Development as a platform for international cooperation, and regional approaches to protecting the rights of migrant workers in an irregular situation.

29. The Working Group noted that it was no longer true that the Convention was being ratified mainly by sending countries, such as Argentina, Azerbaijan, Egypt, Mexico, Turkey, etc. However, there was nevertheless a clear North-South divide. While all States should cooperate to advocate for ratification of the Convention, other ways to promote the rights of migrant workers should also be explored.

30. The biggest platform for international cooperation on migration issues was the Global Forum on Migration and Development, which, even if non-binding and a discussion forum rather than a protection mechanism, could lead to the development of new policies and new forms of international cooperation. Some participants encouraged the Committee to make better use of the Global Forum to promote ratification of the Convention.

31. The Working Group underlined the importance of regional cooperation, including the increasing role of regional courts such as the European Court of Human Rights in interpreting and promoting understanding about migrants' rights. At the bilateral level, States should ensure that readmission agreements provide for protection of the rights under the Convention. The implementation of the Convention at the national level should be strengthened through provision for minimum wages, standard contracts, and pre-departure information from States of origin.

VI. Report to the plenary of the three working groups

32. In her report, the rapporteur for Working Group 1 recalled the worldwide trend to criminalize migrants in an irregular situation. De-criminalization must start in the public perception of migrants. An encouraging example was the Netherlands, where civil society had successfully lobbied for de-criminalizing service providers assisting irregular migrants. In general, regularization criteria should include the length of stay in the State of employment. Among the advocacy tools for de-criminalizing irregular migrants and protecting them from exploitation and abuse were testing their rights in court and working with national legislators. Lastly, the Working Group emphasized that labour inspections must be separated from immigration control and should focus on the occupational health of migrant workers rather than expulsion.

33. The rapporteur for Working Group 2 summarized the discussions within the group and recalled that the scope and extent of economic and social rights granted to migrants in an irregular situation under international law were at the core of the international debate on this issue. Given the fundamental importance of those rights, there was a need to separate the exercise thereof from immigration enforcement.

34. The rapporteur for Working Group 3 presented that group's report and the following recommendations: (1) International cooperation must not be used as a way to limit States' international obligations in relation to the protection of the rights of migrant workers in an irregular situation; (2) States parties to the Convention should jointly push for ratification by using opportunities such as the Global Forum on Migration and Development; (3) Regional approaches to protecting the rights of irregular migrant workers should be strengthened; and (4) the Committee should redefine its role in promoting ratification of the Convention, including within the Global Forum.

35. The discussion focused on the ratification of the Convention. One expert stated that efforts to promote ratification have been modest so far. More resources should be allocated for that purpose by ILO and OHCHR. States parties should play a more active role. Another expert replied that promoting ratification required recognition that the Convention does not protect the right to regularization. Rather, the accent should be placed on cooperation between States. A third expert recalled that many States refused to ratify the Convention, despite the fact that their national legislation provided a higher level of protection and many of the Convention rights were already protected in other human rights treaties. The Committee should therefore work with other treaty bodies to clarify the scope of those rights.

VII. Closing remarks of the Chairperson

36. The Chairperson reiterated that since many States already guaranteed the rights protected under the Convention, nothing should prevent them from ratifying it. The barriers to ratification thus seemed to be of a political rather than an economic or legal nature. He called on participants to make collective efforts to help States better understand the implications of ratification. Migrants in an irregular situation were part of the society of their countries of employment and their contribution to national economies should be made clear, including through a global NGO campaign. In addition, there was a need for capacity-building for public officials on the rights of migrants, whose irregular status should not give rise to criminal responsibility. Countries of origin also had an important role to play in ensuring the rights of their nationals abroad.

37. The Chairperson thanked participants for the important groundwork done during the day of general discussion, the active debate and their written contributions. The Committee's partnership with NGOs was one of its major achievements and similar relationships should be established with trade unions. Many of the conclusions reached at the day of general discussion would be reflected in the Committee's general comment No. 2.